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*Attorneys for Defendant/Counterclaim-Plaintiff*  
*Distinctive Design & Construction, LLC*

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**THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF UTAH**

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JIM & TRACY MILLAR, individuals,  
  
Plaintiffs/Counterclaim-  
Defendants,

vs.

DISTINCTIVE DESIGN &  
CONSTRUCTION, LLC, a South Carolina  
limited liability company,  
  
Defendant/Counterclaim-  
Plaintiff.

**STIPULATED MOTION TO AMEND  
SCHEDULING ORDER**

Case No. 2:21-cv-00505-HCN-DBP

District Judge Howard C. Nielsen, Jr.

Magistrate Judge Dustin B. Pead

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Pursuant to Federal Rules of Civil Procedure 6(b)(1)(A) and 16(b)(4), Defendant/Counterclaim-Plaintiff Distinctive Design & Construction, LLC and Plaintiffs/Counterclaim-Defendants Jim and Tracy Millar, hereby stipulate and jointly move to amend this case's First Amended Scheduling Order.

Good cause exists to enter an order consistent with the relief sought herein. The discovery deadlines in this matter that are the subject of this stipulated motion have not yet passed. Although the parties have diligently engaged in discovery efforts, the parties still have outstanding discovery

efforts to undertake as they have some written discovery left, including from third parties, and no depositions have been taken. Accordingly, both parties need additional time to conduct the remaining discovery in this case. The parties have met and conferred about these issues, and have agreed to the deadlines herein.

“[D]istrict courts should normally grant extension requests, made before the deadline, in the absence of bad faith by the requesting party or prejudice to another party.” *Rachel v. Troutt*, 820 F.3d 390, 394 (10th Cir. 2016). Given the foregoing, the Parties respectfully request that the Court enter an amended scheduling order as follows:

#### **DISCOVERY LIMITATIONS**

- |    |  |                  |
|----|--|------------------|
| a. | Last day to serve written discovery:   | <u>7/4/2022</u>  |
| b. | Close of fact discovery:   | <u>8/8/2022</u>  |
| c. | (optional) Final date for supplementation of disclosures and discovery under Rule 26(e): | <u>8/29/2022</u> |

#### **RULE 26(a)(2) EXPERT DISCLOSURES & REPORTS**

##### **Disclosures (subject and identity of experts)**

- |    |                                 |                   |
|----|---------------------------------|-------------------|
| a. | Parties bearing burden of proof | <u>8/22/2022</u>  |
| b. | Counter disclosures:            | <u>10/24/2022</u> |

##### **Reports**

- |    |                                      |                   |
|----|--------------------------------------|-------------------|
| a. | Parties bearing the burden of proof: | <u>10/10/2022</u> |
| b. | Counter Reports:                     | <u>12/12/2022</u> |

#### **OTHER DEADLINES**

- |    |                                |                  |
|----|--------------------------------|------------------|
| a. | Last day for expert discovery: | <u>2/13/2023</u> |
|----|--------------------------------|------------------|

- b. Deadline for filing dispositive or potentially dispositive motions: 3/6/2023
- c. Deadline for filing partial or complete motions to exclude expert testimony: 3/6/2023
- d. Deadline for filing a request for a scheduling conference with the district judge for the purpose of setting a trial date if no dispositive motions are filed 3/13/2023

If dispositive motions are filed and the district judge's ruling on those motions does not resolve the case, the parties shall file a request for a scheduling conference with the district judge for the purpose of setting a trial date no later than one week after the ruling on the dispositive motions.

#### **SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION**

- a. Evaluate case for settlement/ADR on: 11/16/2022
- b. Settlement probability Fair

A proposed scheduling order reflecting the above schedule is filed concurrently herewith.

*\*signatures on the next page\**

DATED: April 1, 2022.

**SNELL & WILMER L.L.P.**

/s/ Tyson J. Prsbrey

Stewart O. Peay

Tyson J. Prsbrey

*Attorneys for Defendant/Counterclaim-Plaintiff  
Distinctive Design & Construction, LLC*

**BABCOCK SCOTT & BABCOCK, P.C.**

/s/ \*Andrew Berne

Jason H. Robinson

Andrew L. Berne

*Attorneys for Plaintiffs/Counterclaim-Defendants  
Jim and Tracy Millar*

*\*signed with permission via April, 1 2022 email*